IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12243 of 2003

with

SPECIAL CIVIL APPLICATION No. 12245 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE
and
HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAGRITI PLASTICS LTD.

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 12243 of 2003

MS AMRITA M THAKORE for Petitioner No. 1-2

MR DN PATEL for Respondent No. 1

..... for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

and

HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 08/12/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE A.R.DAVE)

1. We have heard the learned advocates. In view of the fact that similar legal issues are involved in both the petitions, at the request of the learned advocates, both the petitions are finally heard together.

2. RULE. Senior Standing Counsel Shri D.N. Patel appearing for the respondents waives service of rule in both the petitions.

3. The petitioners in both the petitions had imported 2-Ethyl Hexanol (2EH) and Normal Butanol during the period commencing from February, 2000 to April, 2000. Anti-dumping duty, which was payable in respect of import of the said goods had been duly paid by the petitioners as determined under Notification No. 6/2000 dated 27th January, 2000. The said Anti-dumping duty had been determined under the provisions of Rule 13 of the Customs

Tariff (Anti-Dumping Duty on Dumped Articles) Rules, 1995 (hereinafter referred to as "the Rules"). As the amount payable in respect of the said import has been duly paid, according to the petitioners, nothing further was required to be paid. It is the case of the petitioners that under Notification bearing No.109/2000 dated 18th August, 2000, Anti-dumping duty has been enhanced by the Union of India. By virtue of the Notification dated 18th August, 2000, the petitioners were called upon to pay higher amount of Anti-dumping duty though, the petitioners had already paid Anti-dumping duty which was in force at the time when the aforestated goods had been imported by the petitioners. As the petitioners were called upon to pay higher amount of duty in pursuance of Notification dated 18th August, 2000, which is having retrospective effect, the petitioners had challenged the validity of the order, whereby the additional Anti-dumping duty Dumping Duty had been demanded. When an appeal was filed against the said orders, the appellate authority had directed the petitioners to pre-deposit the entire amount of difference, which the petitioners had to pay in pursuance of Notification dated 18th August, 2000.

4. Being aggrieved by the orders passed in Appeal, as the said orders were granted on a condition of pre-deposit, the petitioners had submitted applications for modification, but the applications submitted by the petitioners in both the cases have been rejected. Being aggrieved by the said orders and the orders passed below modification applications whereby the petitioners have been directed to make payment of the entire amount of difference as pre-deposit, the petitioners have approached this Court.

5. It has been submitted by the learned advocate appearing for the petitioners that the appeals are pending for hearing but as the amount of pre-deposit has not been paid by the petitioners, the said appeals have not been heard and by virtue of an interim order passed by this Court the appellate authority has been restrained from dismissing the appeals for want of non payment of the amount of pre-deposit.

6. Learned advocate Shri Mihir Joshi appearing for the petitioners has submitted that prima-facie it appears that the amount demanded from the petitioners by way of pre-deposit is unjust for the reason that by virtue of Notification No. 109/2000 dated 18th August, 2000, Anti-dumping duty Dumping Duty has been increased with retrospective effect. It is not in dispute that the

goods had been imported during the period commencing from February to April, 2000 and the Anti-dumping duty, which was payable at the relevant time had been duly paid by the petitioners. It has been submitted by the learned advocate for the petitioners that by virtue of Notification No. 109/2000 dated 18th August, 2000, Anti-dumping duty Dumping Duty has been increased with effect from 27th January, 2000. It has been submitted by the learned advocate that Anti-dumping duty should not have been increased with retrospective effect and the said Notification is neither just nor legal, though he has not challenged the validity of the Notification before this Court. It has been submitted by him that due to peculiar facts of the case, the petitioners should not have been called upon to pay the amount which becomes payable in pursuance of Notification No. 109/2000 dated 18th August, 2000. It has been therefore prayed that the impugned stay orders and the orders passed on modification applications rejecting the said applications be quashed and set aside.

7. It has been further submitted by learned advocate Shri Mihir Joshi appearing for the petitioners that even if the Anti-dumping duty finally determined by the respondent authorities is higher than the provisional duty, it cannot be collected from the importer in view of the said provisions of the Rule 21. According to the learned advocate, the additional demand made in respect of the goods already imported, for which the amount of the Anti-dumping duty has been paid, could not have been again demanded by the respondent authorities.

8. Looking to the facts and the legal position narrated hereinabove, learned Senior Central Government Standing Counsel Shri D.N. Patel could not make any legal submission. As the appeals are pending before the appellate authority, without saying anything on merits of the appeals, looking to the facts of the case we feel that the petitioners should not have been called upon to pay any amount by way of pre-deposit.

9. In view of the facts of the case, we quash and set aside the said orders challenged in these petitions. The appellate authority is directed to hear the appeals on merits and in accordance with law after considering the facts of the case as soon as possible. Learned advocate Shri Mihir Joshi has assured this Court that the learned advocates appearing for the petitioners before appellate authority shall extend their cooperation so that the appeals can be heard at an early date.

10. In view of the above facts, the impugned stay orders dated 16.06.2003 and 31.07.2003 which are challenged in both the petitions are quashed and set aside. Both the petitions are allowed. Rule is made absolute to the above extent in each of the petitions with no order as to costs.

(A.R. DAVE, J.)

(K.A. PUJ, J.)

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